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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,665	06/05/2001	Donald Gringer	30398/00024	5770

7590 12/30/2003

Raymond B. Churchill, Jr.  
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270 Madison Avenue  
New York, NY 10016

EXAMINER
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DRUAN, THOMAS J

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 12/30/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/874,665

Applicant(s)

GRINGER ET AL. 

Examiner

Thomas J. Druan, Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6 and 8-11 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7 and 12-14 is/are rejected.
- 7) ☒ Claim(s) 3 and 15-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to Applicant's amendment received on 26 September 2003.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 4, 5 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by USPN 6,349,473 to Schmidt.

Schmidt discloses the invention as claimed including a cutting device comprising a metal housing (column 3, lines 6-7) comprising first and second separable portions, 20 & 22, the first portion comprising a locking aperture 48, the second portion comprising an attachment aperture (hole in structure 28); and a locking apparatus 40 for removably attaching the first and second portions of the housing, the locking apparatus comprising an attachment portion adapted to be fixedly attached in the attachment aperture, and a locking arm 64 adapted to be releasably locked into the locking aperture

to secure the separable portions together. The attachment aperture and locking aperture are correspondingly positioned wherein the locking arm becomes aligned with the locking aperture when the first and second portions of the housing are aligned for assembly. Fig. 3 shows the locking apparatus 40 having an extension at each end thereof that lock the locking apparatus in the attachment aperture against a shoulder (an outside surface) thereof. The locking apparatus is made of plastic (Column 4, lines 26-27).

5. Claims 7 & 13 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,813,121 to Gringer.

Gringer discloses the invention as claimed including an improved cutting device having a housing formed of first and second portions 4 & 6, a return spring 60, and a blade carrier 22 biased by the return spring, the improvement comprising a locking apparatus 10/66 for releasably attaching the first and second portions of the housing, the locking apparatus being integrally molded with the return spring and the blade carrier (fig. 43). Thumb piece 10 and aperture 66 are considered a locking apparatus because when the aperture 66 is secured onto pin 64 in the lower housing 6, and the thumb piece 10 has been inserted into opening 14 of the upper housing 4 and pushed forward as shown in figure 5, the upper and lower housings are locked together even after the release lever 18 has been released from locking lip 54 since thumb piece 10 cannot go through slot 8 and aperture 66 is held securely on pin 64 (see column 4, lines 20-21 and column 5, line 58 – column 6, line 18).

***Claim Rejections - 35 USC § 103***

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gringer in view of Schmidt.

Gringer discloses the invention substantially as claimed, including a locking mechanism made of resilient plastic, but lacks a metal housing. Schmidt discloses a housing 12 made out of metal, and a locking mechanism 54 made out of plastic. It would have been obvious to one skilled in the art to make the first and second separable portions of Gringer out of metal and make the locking device out of plastic since metal is durable and therefore suitable for a housing structure, and plastic is resilient, suitable for resilient locking devices.

***Allowable Subject Matter***

7. Claims 6 and 8-11 are allowed.

8. Claims 3 and 15-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. Applicant's arguments filed 26 September 2003 have been fully considered but they are not persuasive. Applicants remarks regarding claims 1,2,4,5 and 14 are moot in view of the new grounds of rejection. Regarding claims 7, 12, and 13, Applicant

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contends that Gringer does not disclose a housing lock configured to selectively secure separable portions of the housing together in a closed usable alignment.

10. Applicant's remarks are well taken; however, it is the Examiner's position that the claimed invention is anticipated or otherwise obvious in view of Gringer. Gringer discloses a housing lock 10/66 that secures the separable portions of the housing together in a closed usable alignment since it is clear that with the lock 10/66 in its locking configuration, the housing halves cannot be separated from one another and, while not tightly connected, the utility knife could certainly still be used as a knife since the blade that accomplishes the cut would still be exposed.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Druan, Jr. whose telephone number is 703-308-4200. The examiner can normally be reached on M-F (8:30-6:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

*tjd*  
tjd

December 23, 2003

*TJ - Ash*  
BOYER ASHLEY  
PRIMARY EXAMINER